IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
ARBITRATION PETITION NO.107 OF 2007

Sunil Atur Hingorani — Petitioner
vs.
Vipul Suresh Mehta — Respondent

Mr.M.M.Tally i/b.M/s.S.Mahomedbhai & Co. for the petitioner.

Mr.Gaurav Kothari i/b.M/s.Deven Dwarkadas & Partners for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 13th April, 2007

P.C.

The petitioner, as a partner of the firm M/s.Avis Coating (for short, "the suit firm"), has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") and has basically prayed for the appointment of Court Receiver in respect of the suit partnership firm and all its assets and properties as listed in the schedule annexed at Exhibit "B". Prayer for restrainment order is also made. Those prayers are as under:

> A. that pending the arbitration proceedings and the implementation and enforcement of the Award by an Arbitral Tribunal, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as a Receiver in respect of the suit partnership firm of M/s. Avis Coating and all its assets and properties, some of which are listed in the schedule annexed at Exhibit "B" to the Petition with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908 including the power to appoint an agent to run the business of

the suit firm of M/s.Avis Coating on usual terms and conditions, (but without royalty.)

B. that pending the arbitration proceedings and the implementation and enforcement of the Award by an Arbitral Tribunal, the respondent be restrained by an order and injunction of this Hon'ble Court from in any manner directly or indirectly alienating, encumbering or creating any third party rights or parting with possession of any of the assets or properties of the suit firm of M/s. Avis Coating including those listed in the Schedule thereof at Exhibit "B" to the Petition.

2. The respondent has filed affidavit dated 5.4.2007 and resisted the said prayers. The petitioner has filed rejoinder dated 11.4.2007. The learned counsel appearing for the respondent, however, objected the aspersions mentioned in bracketed portions of paragraphs 2(b) & (f), 6, and 7 of rejoinder dated 11.4.2007. The said aspersions are expunged by consent.

3. Admittedly there is a dissolution notice dated 22.3.2007 and the said firm has been dissolved. Without going into further controversy about the siphoning of money and/or mismanagement of the firm as alleged in the reply by the respondent, at this stage of the proceedings pending appointment of an Arbitrator, in view of the arbitration clause, the only issue is whether the business should continue or not. The business was running concerned when it was closed abruptly. There are various obligations of the firm which are ultimately bound to create further

complications against the partners as well as the firm. Therefore, to avoid complications, I am of the view that at this stage, though the said firm is dissolved, it is just and convenient that the business of the said firm can be continued by appointing a Receiver.

4. The respondent has averred that the petitioner has been working partners of the said firm and he was incharge of the day to day affairs whereas the respondent was a sleeping partner as referred in para 19 by the respondent. This fact, according to me, goes in favour of the petitioner to the extent that the firm's business need to be allowed to be continued as an agent of the Court Receiver. The respondent is however, even objecting to the same.

5. In the facts and circumstances of the case, the learned counsel for the respondent also conceded that the Receiver be appointed. After considering the averments made in the petition as well as the rejoinder filed by the petitioner and the reply filed by the respondent, I am inclined to grant prayer clause (a) except bracketed portion.

6. The only question is as to who should act as an agent of the Court Receiver to run the business of the firm in question. As submitted by both the learned counsel the Court Receiver shall appoint one or other partners of the firm as his agent to conduct the

business of the said firm and use its assets on usual terms and conditions after giving an opportunity to both the partners to make their offers or holding bids or by adopting other reasonable procedure so as to procedure best available terms. The Court Receiver shall expedite the process so as to minimise the loss and undue hardship to the suit firm and its partners, reasonably within four weeks.

7. The petitioner shall put the Receiver in funds for initial expenses. All costs, charges and expenses of the Court Receiver shall be met out of the funds belonging to the suit partnership.

8. The petition stands disposed of in the aforesaid terms.

9. The Court Receiver to act on an ordinary copy of this order duly authenticated as true by the Associate of this Court.

. C.C. expedited.

[ANOOP V. MOHTA,J.]